

DEPARTMENT OF STATE REVENUE

REVENUE RULING ST 97-06

December 1, 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department=s official position concerning a specific issue.

ISSUE

Sales/Use Tax - Purchase of Tangible Personal Property Used in the Operation and Management of Wastewater Treatment Facilities

Authority: IC 6-2.5-5-12, IC 8-1-2-1, Rule 45 IAC 2.2-4-11

The taxpayer requests the Department to rule on the application of sales/use tax to the purchase of tangible personal property used in the operation and management of wastewater treatment facilities.

STATEMENT OF FACTS

1. The taxpayer is a Missouri corporation licensed to do business in the state of Indiana.
2. The taxpayer enters into contracts with municipalities to operate and maintain wastewater treatment systems (WTS), also commonly referred to as Asanitary sewer systems.@
3. Pursuant to the contracts, the taxpayer is required to engage in all the activities necessary to the operation of the WTS facilities including the following: (1) maintain the Alift stations@ which elevate the influents to the treatment facility; (2) treat the wastewater via physical, biological and chemical procedures; (3) remove the by-products of the treatment process. To fulfill its contractual obligations, the taxpayer must purchase the tangible personal property needed to run and maintain the WTS facilities.
4. The taxpayer purchases the items of tangible personal property to operate and maintain the physical equipment of the WTS facility, including the Alift stations.@ Most of these items of tangible personal property are installed by the taxpayer and become incorporated into the realty

of the WTS facility. Such tangible personal property includes the following: (1) Motors, pumps, blowers and other equipment used at the lift stations and the wastewater treatment plant; (2) pipes and fittings used at the lift stations or wastewater treatment plant; and (3) equipment used to dispense the various chemicals (see below) used at the wastewater treatment plant.

The taxpayer also purchases items of tangible personal property for use in the operation and maintenance of the WTS facilities that do not become incorporated into the realty. These articles of tangible personal property include computer equipment, lab equipment, water testing equipment, hand tools used by taxpayer personnel in maintenance activities, and Asupply-type@ items such as lubricants and safety equipment and clothing.

5. The taxpayer purchases the following chemicals for use and consumption in the treatment process:
 - (1) Disinfectants - Used for chlorination
 - (2) Sulfur Dioxide - Used for dechlorination
 - (3) Polymers - Used for sludge treatment
6. The taxpayer purchases pumps and related equipment to collect and remove the Asediment@ or Asludge@ that accumulates in the holding areas of the WTS facilities. The Asludge@ is removed from the plants for transport and disposal.

DISCUSSION

IC 6-2.5-5-12 states:

(a) Transactions involving tangible personal property are exempt from the state gross retail tax, if:

(1) the property is classified as source of supply plant and expenses, the pumping plant and expenses, or water treatment plant and expenses according to the uniform system of accounts which was adopted and prescribed for the utility by the Indiana utility regulatory commission; and

(2) the person acquiring the property is a public utility that furnishes or sells water in a retail transaction described in IC 6-2.5-4-5.

(b) Transactions involving tangible personal property are exempt from the state gross retail tax, if:

(1) the property is classified as collection plant and expenses, treatment and disposal

plant and expenses, or system pumping plant and expenses; and

(2) the person acquiring the property is a public utility that collects, treats, or processes wastewater.

IC 8-1-2-1(a) provides:

(a) A public utility@, as used in this chapter, means every corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment within the state for the:

(1) conveyance of telegraph or telephone messages;

(2) production, transmission, delivery, or furnishing of heat, light, water, or power; or

(3) Collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

The term does not include a municipality that may acquire, own, or operate any of the foregoing facilities.

Rule 45 IAC 2.2-4-11(d) further defines A public utilities@ as organizations which are engaged in furnishing electricity, gas, water, etc., have the right to eminent domain, or are subject to government regulation in connection with the furnishing of public utility services.

It is clear from the above statutes and regulation that for the taxpayer to purchase certain tangible personal property (property that is classified as collection plant and expenses, treatment and disposal plant and expenses, or system pumping plant and expenses) exempt from sales/use tax the taxpayer must be a public utility@ that collects, treats, or processes wastewater. For the taxpayer to qualify as a public utility@ in the state of Indiana the taxpayer must not only satisfy the provisions of IC 8-1-2-1, but, must, also, be registered with the Indiana Utility Regulatory Commission for regulatory purposes pursuant to Rule 45 IAC 2.2-4-11. Upon contacting the Indiana Utility Regulatory Commission it was found that the taxpayer was not registered with the Commission. In the instant case then, the taxpayer does not qualify as a public utility@ in the State of Indiana, hence, is not entitled to the exemption from sales/use tax as afforded by IC 6-2.5-5-12.

RULING

The Department rules that the taxpayer=s purchase of tangible personal property used in the operation and management of wastewater treatment facilities is subject to sales/use tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

INDIANA DEPARTMENT OF REVENUE